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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utilities Code Section 2827.1, and to Address Other Issues Related to Net Energy Metering.

Rulemaking 14-07-002

**THIRD AMENDED SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

**Summary**

This Amended Scoping Memo and Ruling (Third Amended Scoping Memo) identifies the remaining issues for consideration in this proceeding, including issues carried over from Decision (D.) 16-01-044 and the Second Amended Scoping Memo and Ruling issued by former Assigned Commissioner Picker on March 4, 2016.<sup>1</sup> This ruling also adopts a procedural schedule for the remainder of this proceeding; designates the presiding officers; affirms the categorization and need for hearing; and sets the time for the conclusion of this

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<sup>1</sup> Second Amended Scoping Memo and Ruling may be found at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M159/K268/159268579.PDF>

proceeding consistent with Rule 7.3 of the Commission's Rules of Practice and Procedure.<sup>2</sup>

## **1. Procedural Background**

This proceeding addresses the legislative direction given in Public Utility (Pub. Util.) Code § 2827.1<sup>3</sup> to develop a successor to the net energy metering (NEM) program authorized in Section 2827. The Order Instituting Rulemaking (OIR) for this proceeding was adopted by the Commission on July 10, 2014, and a prehearing conference was held on October 30, 2014. The original Scoping Memo and Ruling of Assigned Commissioner was issued on January 23, 2015, and an Amended Scoping Memo was issued on December 11, 2015. The Commission adopted a successor to the NEM program in D.16-01-044 on January 28, 2016, and issued a Second Amended Scoping Memo identifying the issues for consideration in the second phase of this proceeding on March 4, 2017. Today's amended scoping memo updates the scope and schedule for the remainder of this proceeding.

## **2. Scope of Issues**

The list of issues within the scope of this proceeding has been drawn from the original Order Instituting Rulemaking for 14-07-002, as well as subsequent developments such as Commission direction provided in D.16-01-044, which adopted the current NEM tariff, and legislation enacted since the OIR was issued. The issues listed in the Second Amended Scoping Memo, as follows, remain within the scope of this proceeding:

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<sup>2</sup> Unless otherwise noted, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

<sup>3</sup> Unless otherwise noted, all subsequent citations to statute are to the Public Utilities Code.

- Consideration and adoption of alternatives to encourage growth of distributed generation by residential customers in Disadvantaged Communities (DACs);
- Oversight and administration of the successor tariff adopted in D.16-01-044;
- Implementation of Assembly Bill (AB) 693, which requires the Commission to use greenhouse gas allowance revenues received by electrical corporations to provide monetary incentives for the installation of solar energy systems on qualified multifamily affordable housing properties, with proceeds offsetting electricity usage by low-income tenants;
- Consumer protection under the successor tariff and any alternatives for disadvantaged communities that may be adopted;
- Measurement and evaluation, marketing and outreach, and related program elements, including budgets, for customer-sited renewable distributed generation (DG);
- Any safety issues that may be identified;
- As needed and appropriate in this proceeding, development of metrics for reviewing whether customer-sited renewable DG is continuing to grow sustainably; and
- As needed and appropriate in this proceeding, support for the Commission's planned review of the successor tariff in 2019.

Since the issuance of the Second Amended Scoping Memo, several issues have been added to the scope of this proceeding. These issues are:

- Implementation of AB 1637 from the 2015-2016 legislative session, which requires the Commission to implement an emissions performance standard for

NEM fuel cell customers, once a standard is adopted by the State Air Resources Board;

- Resolution of the Petition for Modification filed in this proceeding on May 19, 2017, requesting the exemption of multifamily affordable housing (MASH) customers on Virtual Net Energy Metering (VNEM) tariffs from the otherwise applicable requirement that NEM customers take service on a Time of Use (TOU) rate; and
- Consideration of possible tariff modifications to facilitate the use of energy storage systems by customers taking service under VNEM tariff provisions.

In addition, as provided in Rulemaking (R.) 14-07-002, petitions for modification of decisions affecting NEM tariffs, including those related to decisions in other proceedings such as R.12-11-005, should be raised in the context of this proceeding.<sup>4</sup> The scope of this proceeding will also include the implementation of any additional NEM-related legislation enacted in the current legislative session.

The highest priority issues to be addressed before the closure of this proceeding include the adoption of a framework for AB 693 implementation and the development of options for increasing use of renewable distributed generation in disadvantaged communities.<sup>5</sup> We expect to close this proceeding with the adoption of a new Order Instituting Rulemaking on NEM issues in spring 2018. The primary focus of that proceeding will be on the evaluation of existing NEM tariffs and programs, and the development and adoption of

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<sup>4</sup> R.14-07-002 at 1.

<sup>5</sup> Senate Bill (SB) 92, adopted with the 2017-2018 State Budget in late June, clarifies the funding amount available to support activities related to AB 693, and so facilitates the development of a framework for the implementation of AB 693.

successor tariffs. In addition, any issues not resolved before the adoption of a successor rulemaking are expected to carry over into the new proceeding.

### **3. Coordination with Other Proceedings**

On November 10, 2016, the Commission endorsed a Distributed Energy Resources (DER) Action Plan.<sup>6</sup> This action plan contemplates coordination among several Commission proceedings affecting policy on distributed energy resources, including R.14-07-002. Although no formal coordination of scheduling or issues with these other proceedings is required, such coordination is consistent with the intentions expressed in the Second Amended Scoping Memo. That previous scoping memo requested that parties note in their submissions in this proceeding any relevant information about related issues in other Commission proceedings. We repeat that guidance here.

Specifically, Commission proceedings that address issues relevant to this proceeding include R. 12-11-005, the ongoing proceeding on customer-owned DG in general; R.12-06-013 (residential rate redesign); R.14-08-013 (distribution resources plans); R.14-10-003 (integration of distributed energy resources); and R.16-02-007 (integrated resource plans). In addition, we anticipate coordination between the activities in this proceeding related to DACs and ongoing work in R. 15-03-010, *Order Instituting Rulemaking to Identify Disadvantaged Communities in the San Joaquin Valley and Analyze Economically Feasible Options to Increase Access to Affordable Energy in those Disadvantaged Communities*.

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<sup>6</sup> In endorsing the DER Action Plan, the Commission intends to guide development and implementation of policy related to distributed energy resources; it is not the Commission's intention to determine outcomes of individual proceedings. The DER Action Plan may be found at:

[http://www.cpuc.ca.gov/uploadedfiles/cpuc\\_public\\_website/content/about\\_us/organization/commissioners/michael\\_j\\_picker/2016-09-26%20der%20action%20plan%20final3.pdf](http://www.cpuc.ca.gov/uploadedfiles/cpuc_public_website/content/about_us/organization/commissioners/michael_j_picker/2016-09-26%20der%20action%20plan%20final3.pdf)

#### **4. Schedule**

In accordance with Section 1701.5(b), this ruling sets a deadline of March 31, 2018, for the completion of this proceeding. It is the Commission's intention to close this proceeding and initiate a successor proceeding not later than that date. This deadline may be extended by order of the Commission. (Section 1701.5(a).) Issues within the scope of this proceeding that remain unresolved at the closure of this docket are expected to be transferred into the successor proceeding.

The adopted schedule for the remainder of the proceeding is:

<b>EVENT</b>	<b>DATE</b>
Proposed Decision on AB 693 Framework	Fourth quarter 2017
Proposed Decision on DAC Issues	Fourth quarter 2017
Successor OIR Adopted and remaining issues transferred	By March 31, 2018

The assigned Commissioner or assigned ALJ may modify this schedule as necessary to promote the efficient management and fair resolution of this proceeding.

If there are any workshops in this proceeding, notice of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

#### **5. Final Oral Argument**

A party in a ratesetting proceeding in which an evidentiary hearing was held has the right to make a Final Oral Argument (FOA) before the Commission, if the FOA is requested within the time and manner specified in the Scoping Memo or later ruling (Rule 13.13). If a hearing has been held, parties should use the following procedure for requesting FOA, unless a later ruling provides

different instructions. If a hearing has not been held, these procedures do not apply.

Any party seeking to present FOA may file and serve a motion at any time that is reasonable, but no later than the last date that reply briefs are due. The motion must state the request, the subject(s) to be addressed, the amount of time requested, recommended procedure and order of presentations, and anything else relevant to the motion. The motion must contain all the information necessary for the Commission to make an informed ruling on the motion, providing for an efficient, fair, equitable, and reasonable FOA. If more than one party plans to move for FOA, parties must use their best efforts to present a joint motion, including a joint recommendation on procedure, order of presentations, and anything else relevant to the motion. A response to the motion may be filed within five days of the date of the motion.

If a final determination is made that no hearing is required, Rule 13.13 will cease to apply, along with a party's right to make an FOA.

## **6. Categorization and Need for Hearing**

The categorization of this proceeding as ratesetting was confirmed in the original Scoping Memo in accordance with Rule 7.1, and was not appealed. (See Rule 7.6.) The determination made in the Scoping Memo that hearings are needed is maintained in this Third Amended Scoping Memo.

## **7. Ex Parte Communications**

In a ratesetting proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors and the ALJ are only permitted as described at Public Utilities Code § 1701.1 and 1701.3. and Article 8 of the Rules. Interested persons are advised that, to the extent that the

requirements of Rule 8.1 et seq. deviate from Code sections 1701.1 and 1701.3 as amended by SB 215, effective January 1, 2017, the statutory provisions govern.

**8. Intervenor Compensation**

Any party that expects to request intervenor compensation for its participation in this rulemaking must file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 and Sections 1801-1812.

**9. Assigned Commissioner and Presiding Officer**

Martha Guzman Aceves is the assigned Commissioner and Anne E. Simon, Jessica T. Hecht, and Valerie Kao are the assigned Administrative Law Judges (ALJs). Pursuant to Public Utilities Code § 1701.3 and Rule 13.2 of the Commission's Rules of Practice and Procedure (Rule or Rules), Anne E. Simon, Jessica T. Hecht, and Valerie Kao are designated as the Presiding Officers.

**10. Filing, Service and Service List**

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocols set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded, when serving copies of documents, the document format must be consistent with the requirements set forth in Rules 1.5 and 1.6. Additionally, Rule 1.10 requires



service on the ALJs of both an electronic and a paper copy of filed or served documents.

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. Parties can find information about electronic filing of documents at the Commission's Docket Office at [www.cpuc.ca.gov/PUC/efiling](http://www.cpuc.ca.gov/PUC/efiling). All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

## **11. Discovery**

Discovery may be conducted by the parties consistent with Article 10 of the Commission's Rules. Any party issuing or responding to a discovery request shall serve a copy of the request or response simultaneously on all parties. Electronic service under Rule 1.10 is sufficient, except Rule 1.10(e) does not apply to the service of discovery and discovery shall not be served on the Administrative Law Judge. Deadlines for responses may be determined by the parties. Motions to compel or limit discovery shall comply with Rule 11.3.

## **12. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public

Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

### **13. Settlement and Alternative Dispute Resolution**

While the schedule does not include specific dates for settlement conferences, it does not preclude parties from meeting at other times provided notice is given consistent with our Rules.

The Commission offers Alternative Dispute Resolution (ADR) services consisting of mediation, facilitation, or early neutral evaluation. Use of ADR services is voluntary, confidential, and at no cost to the parties. Trained ALJs serve as neutrals. The parties are encouraged to visit the Commission's ADR webpage at <http://www.cpus.ca.gov/adr/>, for more information. If requested, the assigned ALJ will refer this proceeding, or a portion of it, to the Commission's ADR Coordinator. Alternatively, the parties may contact the ADR Coordinator directly at [adr\\_program@cpuc.ca.gov](mailto:adr_program@cpuc.ca.gov).

#### **IT IS RULED:**

1. The amended scope of issues and schedule set forth above are hereby adopted for this proceeding, with the understanding that additional scheduling may be necessary to address any issues in this proceeding that are not currently scheduled.
2. It is the Commission's intent to close this proceeding and initiate a successor proceeding by March 31, 2018.
3. Rulemaking 14-07-002 is categorized as ratesetting.
4. Rule 8.2 (c) and Rule 8.3 apply with respect to *ex parte* communications.
5. Hearings are determined to be needed.

6. Commissioner Martha Guzman Aceves is the assigned Commissioner. Administrative Law Judges Anne E. Simon, Jessica T. Hecht, and Valerie Kao are the Presiding Officers for this proceeding.

7. With limited exceptions that are subject to reporting requirements, *ex parte* communications are prohibited. (Public Utilities Code § 1701.3(h); Article 8 of the Commission's Rules of Practice and Procedure.)

8. Parties shall adhere to the instructions provided in Appendix A of this ruling for submitting supporting documents.

Dated August 31, 2017, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES

Martha Guzman Aceves  
Assigned Commissioner

## **APPENDIX A**

### **Electronic Submission and Format of Supporting Documents**

The Commission's web site now allows electronic submittal of supporting documents (such as testimony and work papers).

Parties shall submit their testimony or workpapers in this proceeding through the Commission's electronic filing system.<sup>1</sup> Parties must adhere to the following:

- The Instructions for Using the "Supporting Documents" Feature,  
(<http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=158653546>) and
- The Naming Convention for Electronic Submission of Supporting Documents  
(<http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=100902765>).
- The Supporting Document feature does not change or replace the Commission's Rules of Practice and Procedure. Parties must continue to adhere to all rules and guidelines in the Commission's Rules of Practice and Procedures including but not limited to rules for participating in a formal proceeding, filing and serving formal documents and rules for written and oral communications with Commissioners and advisors (i.e. "*ex parte* communications") or other matters related to a proceeding.

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<sup>1</sup> These instructions are for submitting supporting documents such as testimony and work papers in formal proceedings through the Commission's electronic filing system. Parties must follow all other rules regarding serving testimony.

Any document that needs to be formally filed such as motions, briefs, comments, etc., should be submitted using Tabs 1 through 4 in the electronic filing screen.

- The Supporting Document feature is intended to be solely for the purpose of parties submitting electronic public copies of testimony, work papers and workshop reports (unless instructed otherwise by the Administrative Law Judge), and does not replace the requirement to serve documents to other parties in a proceeding.
- Unauthorized or improper use of the Supporting Document feature will result in the removal of the submitted document by the CPUC.
- Supporting Documents should not be construed as the formal files of the proceeding. The documents submitted through the Supporting Document feature are for information only and are not part of the formal file (i.e. "record") unless accepted into the record by the Administrative Law Judge.

All documents submitted through the "Supporting Documents" Feature shall be in PDF/A format. The reasons for requiring PDF/A format are:

- Security – PDF/A prohibits the use of programming or links to external executable files. Therefore, it does not allow malicious codes in the document.
- Retention – The Commission is required by Resolution L-204, dated September 20, 1978, to retain documents in formal proceedings for 30 years. PDF/A is an independent standard and the Commission staff anticipates that programs will remain available in 30 years to read PDF/A.
- Accessibility – PDF/A requires text behind the PDF graphics so the files can be read by devices designed for those with limited sight. PDF/A is also searchable.

Until further notice, the "Supporting Documents" do not appear on the "Docket Card". In order to find the supporting documents that are submitted electronically, go to:

- Online documents, choose: "E-filed Documents ",

- Select “Supporting Document” as the document type, (do not choose testimony)
- Type in the proceeding number and hit search.

Please refer all technical questions regarding submitting supporting documents to:

- Kale Williams ([kale.williams@cpuc.ca.gov](mailto:kale.williams@cpuc.ca.gov)) 415 703- 3251 and
- Ryan Cayabyab ([ryan.cayabyab@cpuc.ca.gov](mailto:ryan.cayabyab@cpuc.ca.gov)) 415 703-5999